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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,951	04/13/2004	Francis W. Daly JR.	543-99-036 CIP	5451
128	7590	09/02/2005	EXAMINER	
HONEYWELL INTERNATIONAL INC.			GUTIERREZ, ANTHONY	
101 COLUMBIA ROAD			ART UNIT	
P O BOX 2245			PAPER NUMBER	
MORRISTOWN, NJ 07962-2245			2857	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/823,951

Applicant(s)

DALY, FRANCIS W.

Examiner

Anthony Gutierrez

Art Unit

2857

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

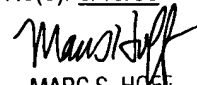
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 3-38.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 8/19/05  
13. ☐ Other: \_\_\_\_\_.

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2857

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant has chosen to further argue against the Final Rejection of the Examiner, but has decided to provide amendments such that all independent claims would include a "comparing" step. The Examiner is not persuaded by the arguments. The Examiner would like to first note, as apparently understood by the Applicant, that the Examiner considers the term "mode" in the reference of Frank, to be equivalent to the term "phase" in both the reference of Kuntman and the claims of the instant application. There is possibility for confusion as the Kuntman reference also uses the word "mode" but to mean something different than a "phase".

The claims have all been rejected in view of a combination of references. The Examiner considers the references to read on the claim language of the instant application, when combined. The Applicant has chosen to argue that the references do not provide the claimed features by initially concentrating on them individually, and then by asserting that Kuntman teaches away from combination. The Examiner has provided citations in Frank relevant to both flight path determinations and flight mode indications. While the Examiner has done this in an attempt to indicate that flight modes (phases) are relevant to Frank, and possibly supports combination with Kuntman, the Examiner is actually relying on the cited sections regarding flight path determinations in Frank, and instead relies on Kuntman regarding the phases. Therefore the Examiner is not persuaded by the Applicant's arguments regarding the assertion that Frank only discloses, "indicating" with respect to modes (phases), as the Examiner's combination does not rely on Frank to do anything more than 'indicate' with respect to modes (phases). As the Examiner admitted previously, since Frank is silent about taking the mode (phase) of flight into consideration when generating a warning, the Examiner relies on Kuntman to show that this would have been obvious.

The Applicant has provided an analysis of the system of Kuntman to arrive at the conclusion that Kuntman teaches away from combination with Frank because wind shear detection and weather detection are mutually exclusive operations of the weather radar in Kuntman. Since the Examiner relies on the system of Frank with respect to weather detection, but since Kuntman apparently takes phase of flight into consideration only during the wind-shear detection, the Applicant apparently believes that Kuntman teaches away from employing phase of flight information during weather detection. The Examiner considers the reference of Kuntman to teach the use of different modes (used here to mean something other than phases) during different phases of flight. One is called a "wind shear detection" mode and another is called "weather detection" mode. Only one mode is apparently employed at a time. The Examiner, however, does not consider the ACTIONS of "weather detection" and "wind shear detection" to be mutually exclusive ACTIONS (such that phase of flights could only be taken into consideration with respect to one and never the other) just because Kuntman has "mutually exclusive" modes that have these particular NAMES. In other words, in the system of Kuntman, the wind shear detection mode is apparently only available when the weather detection mode is not active, but the Examiner does not consider this to suggest that in all conceivable systems, the action of weather detection could never be employed simultaneously with wind shear detection (and/or phase of flight information), but rather that this is simply not the case with respect to KUNTMAN's specific system. The Examiner therefore assumes that the Applicant can only be arguing that Kuntman teaches away from combination with Frank, with respect to ACTUAL SYSTEMS. The Examiner does not consider the reference to teach away because the combination of references by the Examiner is not a combination of systems, but rather a combination of the system of Frank (previously combined with Otsuka) and a TEACHING from Kuntman, not the SYSTEM of Kuntman. The Examiner believes that this is strongly apparent in the standing rejection.

It should be noted here that the Applicant has again asserted that the Examiner is arguing something that the Examiner cannot find in the record. On page 15, line 13 of Applicant's arguments, the Applicant states 'However, the Examiner argues that Kuntman discloses "generating a warning as a function of said forecast information describing a weather condition and said phase of flight"...by teaching...'. The Examiner asserted that Kuntman had teachings that when combined with Frank (and Otsuka) read on such limitations, but this kind of statement by the Applicant suggests that the Examiner is relying only on Kuntman to teach everything in quotation marks. The Examiner is relying on a combination of references to teach this limitation and has based his arguments on the combination.

For purposes of appeal, the proposed amendments will be entered as they simplify issues by including a "comparing" step in all independant claims other than claim 29, which, analogously presently contains such limitation and currently remains rejected.

The Examiner is not persuaded by the Applicant's arguments with respect to this limitation for two reasons. First is that the specific arguments are with respect to Kuntman alone, i.e., "Even Kuntman cannot be said to compare forecast information with the phase of flight...", whereas the rejection is in view of a combination of references regarding this specific limitation. Second is that the Applicant's arguments are regarding the assertion that Kuntman 'cannot be said to compare forecast information WITH the phase of flight...'. The claims are not drawn to comparing A WITH B, but rather A AND B. Therefore, even if the reference did not compare A with B, as long as it compared A AND B, WITH anything else, the Examiner could still rely on the reference.